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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/008,276  | 11/08/2001  | Sara J. Trenhaile    | 5605USA             | 2725             |
| 30173   | 7590        | 05/20/2004           | EXAMINER            |                  |
| GENERAL MILLS, INC.<br>P.O. BOX 1113<br>MINNEAPOLIS, MN 55440 |             |                      | BORISSOV, IGOR N    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3629                |                  |

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/008,276

Applicant(s)

TRENHAILE ET AL.

Examiner

Igor Borissov

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

Claims 8-9 are objected to because of the following informalities:

Claims 8-9 refer to claim 6, and recite "*the physical property*". However, "*physical property*" limitation was introduced in claim 7.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-13 and 15-21 are rejected under 35 U.S.C. 101** because the claimed method *for optimizing ingredient selection for further processing* does not recite a limitation in the technological arts. The independently claimed steps of: *providing a supply of at least one ingredient; calculating at least a first element of said at least one ingredient; contained within said supply; and selecting said at least one ingredient from said supply based on said calculation which correspond to a predetermined recipe to achieve an end product*, are abstract ideas which can be performed mentally without interaction of a physical structure. The method step: *providing a supply of at least one ingredient* may be understood as merely looking for information on a web site. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)).

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims and claims depending from them, are not permitted under 35 USC 101 as being related to non-

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statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-10 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Haeffner et al. (US 6,532,420).**

Haeffner et al. (hereinafter Haeffner) teaches a method and system for production of animal feed, comprising:

Claims 1 and 14. Providing a supply of ingredients for producing a desirable foodstuff (C. 4, L. 56-60); calculating nutritional and cost characteristics of said ingredients contained within said supply and selecting said ingredients based on said calculation of a predetermined recipe to achieve an end product (C. 3, L. 5-6; C. 5, L. 45-49).

Claim 2. See claim 1.

Claim 3. See claim 1.

Claim 4. Said characteristic data of said ingredients includes "providing ability to metabolize phosphorous" (*functional properties*) (C. 4, L. 5-6).

Claim 5. Nutritional properties include *protein* content (C. 4, L. 60-61).

Claims 6. See claim 3. Information as to *fiber content* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703

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*F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) In re Dembiczak 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999).* The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed. The method steps, disclosed in Haeffner would be performed the same regardless if said nutritional properties include *fiber* content, or not.

Claims 7 and 8-9. See claim 1. Information as to *physical property* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) In re Dembiczak 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999).* The specific example of non-functional descriptive material is provided in MPEP 2106,

Claim 10. See claim 1. Information as to *flour* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) In re Dembiczak 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999).* The specific example of non-functional descriptive material is provided in MPEP 2106.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11-13 and 15-21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haeffner in view of Sibley, Jr. (US 4,677,552).**

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Claims 11 and 13. Haeffner teaches all the limitations of claims 11 and 13, except teaching that said ingredient is a grain, and that said downloaded cost data is a grain cost.

Sibley, Jr. (hereinafter Sibley) teaches a method and system for international commodity trade exchange, wherein wheat prices are monitored in real time (Fig. 6, C. 11, L. 1-12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haeffner to include that said ingredients data include wheat (grain) and wheat price, as disclosed in Sibley, because wheat is an important and widely used nutritional product, and products made of wheat would bring additional revenue.

Claim 12. Haeffner teaches: providing a supply of ingredients for producing a desirable foodstuff (C. 4, L. 56-60); calculating nutritional and cost characteristics of said ingredients contained within said supply and selecting said ingredients based on said calculation of a predetermined recipe to achieve an end product; comparing actual composition cost with a predetermined composition cost (C. 3, L. 5-13; C. 5, L. 45-49).

Haeffner does not specifically teach that said cost characteristic data is time-sensitive data, and provided over a network.

Sibley teaches a method and system for international commodity trade exchange, wherein wheat prices are provided in real time to a plurality of user terminals coupled to a computerized trade exchange (Fig. 6, C. 11, L. 1-12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haeffner to include that said cost characteristic data is time-sensitive data, and provided over a network, as disclosed in Sibley, because use of real time prices would increase accuracy of said calculations, as well as allow to adjust the nutritional content to keep the product cost under the threshold (Haeffner; C. 3, L. 11).

Claims 15-16. See claim 13.

Claim 17. See claim 13. Information as to *the content of said output* is non-functional language and given no patentable weight. Non-functional descriptive material

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cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106.

Claim 18. Comparing actual composition cost with a predetermined composition cost (C. 6, Table I; C. 3, L. 5-13).

Claim 19. See claim 18.

Claim 20. Printing from a computer is notoriously well known.

Claim 21. See claim 13.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

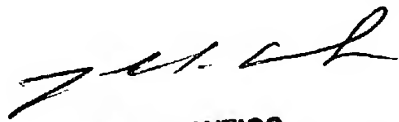
**Washington D.C. 20231**

or faxed to:

**(703) 872-9306** [Official communications; including After Final  
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

JB

  
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